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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 NEHMIAS MUNOZ,

5 Plaintiff,

6 v.

7 14 Civ. 6628 (DLC)

8 POLICE OFFICER ROBERT REID, POLICE OFFICER STEPHEN JONES,
9 SERGEANT BRIAN FLYNN, and SERGEANT JAMES KELLY,

10 Defendants.

11 -----x
12 New York, N.Y.
13 March 15, 2017
14 3:30 p.m.

15 Before:

16 HON. DENISE COTE,

17 District Judge

18 APPEARANCES

19 NEHMIAS MUNOZ
20 Pro Se Plaintiff

21 NEW YORK CITY LAW DEPARTMENT
22 Attorneys for Defendants
23 BY: ARIEL S. LICHTERMAN
24 CAROLYN K. DEPOIAN

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1 (Case called)

2 THE DEPUTY CLERK: Is the plaintiff ready?

3 MR. MUNOZ: Yeah, but I don't have a lawyer.

4 THE DEPUTY CLERK: Is the defense ready?

5 MR. LICHTERMAN: Ariel Lichterman from the New York
6 City Law Department for the defendants, Robert Reid, Stephen
7 Jones, James Kelly, and Brian Flynn, your Honor.

8 THE COURT: I'm sorry. Can you give me your name
9 again?

10 MR. LICHTERMAN: Ariel Lichterman.

11 THE COURT: Thank you.

12 MS. DEPOIAN: Good afternoon, your Honor. This is
13 Carolyn Depoian, also from the Law Department for the same
14 defendants.

15 THE COURT: Thank you so much.

16 Mr. Muñoz, we are going to give you a pad and a pen
17 for you to use during this conference if you would like to.

18 MR. MUNOZ: OK.

19 THE COURT: This is our final pretrial conference
20 before our trial which begins on Monday. I want to discuss
21 with you and defense counsel the issues that I think are
22 important to address in advance of that trial, to describe
23 certain of the process that we can expect to happen during the
24 trial, and to make sure that you and defense counsel have a
25 chance to ask me any questions that you have that would assist

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1 you in preparing for trial.

2 Let me begin, Mr. Muñoz, by addressing that very first
3 point you raised about the fact that you don't have a lawyer.
4 I know that I was not the original judge assigned to this case.
5 Judge Torres was your original judge. This case has been
6 reassigned to me for trial. Judge Torres made several efforts
7 to obtain a lawyer for you. Of course you had a lawyer, as I
8 understand it, early on in the case, but that lawyer withdrew
9 after the mediation process failed to result in a settlement
10 among the parties. That's not uncommon. That happens
11 frequently.

12 Judge Torres didn't stop there, though. She made
13 several more efforts and indeed, since this case was
14 transferred to me, we have made efforts to find an attorney for
15 you through the work of our pro se office. I want to make sure
16 you understand how this process works. In a criminal case,
17 someone charged with an offense has a right to have counsel
18 appointed to represent them. That's a constitutional right.
19 This case is not a criminal case, it is a civil case. So when
20 a judge asks for an attorney for a party in a civil case, they
21 can't order an attorney to appear. They don't even have funds
22 to pay a lawyer. They are just asking a lawyer to volunteer
23 their services.

24 We reached out a number of times. Our pro se office
25 has been in touch with several lawyers. They have looked at

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1 the case. They have not agreed to take the case. This case is
2 a case you filed in 2014, and that's a few years ago now, and I
3 have time to try this case next week. That would be your trial
4 date. I am prepared to proceed with the trial next Monday, but
5 if you want to proceed to trial, you would be representing
6 yourself.

7 Do you understand what I have said to you?

8 Yes, you have a question for me. Please ask it.

9 MR. MUNOZ: OK. I understand. Can I at least get a
10 stand-in counsel available during this procedure of trial?
11 Because I have no whatsoever no legal knowledge whatsoever, so
12 it's like, you know, I won't really understand everything that
13 would be going on. It's like coming in here blindfolded.

14 THE COURT: There isn't any authority under the law
15 for me to require an attorney to be available to assist you
16 during the trial as standby counsel. I know in criminal cases
17 there is, even when a criminal defendant wishes to represent
18 himself at trial, a standby attorney being available to consult
19 with them.

20 But let me inquire this week to see if there is some
21 attorney who would be available to just be by your side for you
22 to consult with, but I am not confident we'll be able to find
23 someone. We will make some effort in that regard.

24 Is that agreeable to you?

25 MR. MUNOZ: Yes, ma'am.

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1 THE COURT: Good. We are going to go slowly here. I
2 fully appreciate that you are not a lawyer.

3 Let me ask you, have you ever represented yourself in
4 a trial before?

5 MR. MUNOZ: Never.

6 THE COURT: I am just going to do my best to explain
7 things to you every step of the way. If you have questions, I
8 want you to feel free to ask me questions. OK?

9 MR. MUNOZ: OK, ma'am.

10 THE COURT: Good. I am going to start by describing
11 to the parties what I understand the evidence at trial is going
12 to be, that is, what witnesses will be called, what documents
13 will be received into evidence, what the exact issues that are
14 being tried are, that is, what the jury is going to decide.

15 My understanding is as follows that you, Mr. Muñoz,
16 were arrested on September 13, 2011, and that you contend that
17 after handcuffs were placed on you at the time of that arrest,
18 the officers used excessive force against you. That's my
19 understanding of your claim.

20 Is that your claim?

21 MR. MUNOZ: Yes, ma'am.

22 THE COURT: Obviously under the Constitution, you have
23 a right that you can complain about any police brutality, any
24 use of excessive force. There's a legal definition for
25 excessive force. I'll be giving that legal definition to the

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1 jury for them to make a decision. But in terms of the factual
2 focus, the issue is did the police officers use excessive force
3 against you on September 13, 2011, after handcuffs had been
4 placed on you. It's not just did one of the officers use
5 excessive force against you, but was any officer who was
6 present and saw another officer using excessive force, did they
7 fail to intervene to stop the other officer from using
8 excessive force against you.

9 Do you understand what I've said so far?

10 MR. MUNOZ: Yes, I understand. It was actually like
11 three of them.

12 THE COURT: Good.

13 MR. MUNOZ: It wasn't just one officer hitting on me.

14 THE COURT: Even if an individual officer you've named
15 as a defendant here didn't actually strike you, if they had the
16 ability to stop one of their fellow officers from striking you
17 in a way that would amount to excessive force, they can be
18 found liable as well, and that theory is called failure to
19 intervene.

20 Let's make sure we agree who the defendants are here.
21 As I understand it, there are four defendants: Police Officer
22 Reid, Police Officer Jones, Sergeant Flynn, and Sergeant Kelly.
23 There is one claim that will be tried, that is the excessive
24 force claim, and with it, the failure to intervene claim
25 against these four defendants.

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1 The injuries that you contend occurred or were
2 inflicted on you after you were handcuffed because the officers
3 used excessive force, as I understand, are the following:
4 There was a laceration to your left eye, a laceration to your
5 right forearm, and a broken rib. I'm not sure if it is one rib
6 or two ribs. Do you remember, Mr. Muñoz?

7 MR. MUNOZ: It's two fractured ribs.

8 THE COURT: Two ribs. Thank you.

9 It's my understanding that you seek damages from these
10 four defendants because of those three injuries, is that right?

11 MR. MUNOZ: That's kind of correct, but I'm going to
12 say that Sergeant Kelly, he wasn't the one who was involved in
13 the excessive force. He was, I believe, just a sergeant at the
14 time.

15 THE COURT: Was he present?

16 MR. MUNOZ: He came in afterwards, really, like when I
17 was already seated on the sidewalk. I was never seated on the
18 bench as they said it was. They said that they sat me on a
19 bench. There was never no bench. They sat me on the sidewalk
20 out on the street. So Sergeant Kelly had no participation of
21 the excessive force.

22 THE COURT: That's helpful. I just want to make sure,
23 because I'm making a decision right now of whether the Sergeant
24 Kelly will have to be a defendant at trial or not. I want to
25 make sure we address this carefully. If he was present when

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1 someone else was beating you or using excessive force against
2 you, he could be liable for failing to stop that. Do you
3 understand that?

4 MR. MUNOZ: I understand, but I was being beaten so
5 hard, I couldn't really acknowledge who was hitting me. I
6 believe that Sergeant Kelly didn't participate in the excessive
7 force. I believe it was just all three -- all of the other
8 officers.

9 THE COURT: You believe that Sergeant Kelly came to
10 the scene afterwards?

11 MR. MUNOZ: Yeah, I guess, being the fact that he was
12 the sergeant and they were just police officers. You know, he
13 was just doing his job as a sergeant and checking on them and
14 seeing if they were all right.

15 THE COURT: I want to, again, go slowly here because
16 this makes a difference to you and your rights. I am
17 understanding that you want to go to trial to get damages
18 against Police Officer Reid, Police Officer Jones, and Sergeant
19 Flynn. Am I correct?

20 MR. MUNOZ: Yeah. Sergeant Flynn wasn't a sergeant at
21 the time, he was a police officer. Actually, all three of
22 them, I believe, I'm not sure if it was the Wade or the
23 Sandoval hearing, one of those hearings I have the minutes,
24 I've got to get my paperwork, because they surprisingly
25 snatched me out of my occupation job in Fishkill. I am like

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1 here surprisingly. I never knew I was going to arrive here
2 actually Monday. So most of my paperwork I left, but I have
3 some of it. I have to find out that they all gave three
4 different testimonies. So in that hearing --

5 THE COURT: Well, before we end today's conference, we
6 are going to go through a list of papers that you would like
7 copies from defense counsel to make sure you're well prepared
8 for this trial.

9 As I understand it, Mr. Muñoz, you agree that Sergeant
10 Kelly can be dismissed from this case since he was not someone
11 who used excessive force against you and was not on the scene
12 when excessive force was being used against you; is that right?

13 MR. MUÑOZ: That's correct, ma'am.

14 THE COURT: So the trial will be against three
15 defendants, not four. As I understand it, the plaintiff had
16 hoped, at one point at least, that one or two employees who
17 were at the store where he was arrested could be identified and
18 perhaps participate in this case as witnesses. I've reviewed
19 the history of the discovery process, including several of the
20 transcripts of conferences that were held by the magistrate
21 judge who was supervising discovery, Magistrate Judge Freeman
22 in particular. Let me see if I can give you the dates of the
23 transcripts that I read that were very helpful to me.

24 I read in particular the transcript of December 18,
25 2015, and January 28, 2016. I've also looked at the letter

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1 that the City wrote to Judge Torres on July 18, 2016. This
2 describes the efforts that were made to try to locate a store
3 employee who may have been present in the store on
4 September 13, 2011.

5 I could give detailed findings with respect to what
6 happened procedurally in this case, and I'm prepared to do that
7 if that would be helpful to anyone, but the bottom line, as I
8 understand it, is that no employee in the store has ever been
9 identified as someone who was present on September 13, 2011,
10 except for someone who is no longer in the country and who no
11 longer owns the store.

12 Is that your understanding, Mr. Muñoz, as well?

13 MR. MUÑOZ: Actually, he's supposed to be the owner of
14 the store. He was never inside of the store that day. He just
15 happened to cooperate with the officers with going by the story
16 that they were saying to him.

17 There was two witnesses. There was a Mexican guy and
18 there was a Dominican guy. And for some reason, I didn't know
19 their names, because I am not really too familiar with -- I'm
20 not too familiar with them. I do shop in that store, so I know
21 the store very well.

22 The store owner, I guess when I shot him the nine
23 questions, because Magistrate Freeman was trying to lead the
24 counselor over here, Mr. Licherman, to locate him so they can
25 bring him in to question him, so I could be able to question

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1 him, but he never showed up. I guess he sold the business and
2 he flew to his country or whatever, and those questions were
3 never answered. One of the questions that I had shot to him in
4 the nine questions was: What happened to the tape recordings,
5 the video recordings of the civilians of the store? Because
6 that store has civilian cameras on it. He never answered it.
7 I guess that video was, say, gone. That was one of the
8 questions I asked him. He was never present at the store, I
9 know that for a fact.

10 THE COURT: Despite the lengthy period of discovery,
11 fact discovery, and it ran for about nine months. It may have
12 run longer. It was first supposed to end in October, then it
13 was extended to December, and then January, and ultimately the
14 end of February. The witnesses were not identified. Efforts
15 were made, so they're not going to be witnesses at the trial.
16 They are unknown to us.

17 The next potential group of witnesses are medical
18 witnesses and I think, if I understand correctly reading all
19 these papers, what is really critical here is that certain
20 medical records be received into evidence to reflect the
21 injuries that you sustained on September 13, 2011, which are
22 important, Mr. Muñoz, to the claim for damages that you're
23 making.

24 In the normal course, and this is true in lots of
25 trials, the parties just agree to have the documents received

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1 into evidence, and then the documents are provided to the jury
2 and the parties are able to make their arguments based on what
3 the documents say. I am going to assume, and we are going to
4 turn to this for a minute, there are going to be no medical
5 witnesses, but that medical records will be received into
6 evidence and that we will discuss with each other precisely
7 which portions of the medical records will be received into
8 evidence.

9 Is that agreeable, Mr. Muñoz?

10 MR. MUNOZ: That's OK with me, ma'am.

11 THE COURT: Good.

12 Is that agreeable, Mr. Lichterman?

13 MR. LICHTERMAN: Yes, your Honor.

14 THE COURT: Let's turn specifically to the medical
15 records. Have defense counsel brought what they believe are
16 the relevant medical records to court today?

17 MR. LICHTERMAN: Yes, your Honor. We actually brought
18 all of the medical records in case you wanted to look at them.
19 Particularly what we think are the records at issue are the
20 ones directly related to the injuries that Mr. Muñoz is
21 claiming in the case that took place right after the incident.

22 THE COURT: Have you identified what passages from
23 those medical records you believe are relevant to the
24 plaintiff's claims, again, the two lacerations and the two
25 broken ribs?

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1 MR. LICHTERMAN: We can identify those pages.

2 Offhand, I don't have the specific page references. I can list
3 a page range in which those injuries are discussed.

4 THE COURT: Have you looked at and have you marked up
5 a copy of those specific pages?

6 MR. LICHTERMAN: We have not marked up a copy.

7 THE COURT: On any page of the document, there may be
8 material that is relevant and material that is irrelevant. For
9 instance, somebody's Social Security number is not relevant.

10 Can I ask you, Mr. Lichterman, to identify those pages
11 and passages from the medical records that you believe are
12 relevant to the plaintiff's claim of injury here and including
13 what he was treated for and complained of on the date of his
14 arrest and treatment records reflecting treatment for those
15 injuries over time. For instance, if there are broken ribs,
16 they may have been treated over a matter of weeks or months, I
17 have no idea, but any records that reflect that treatment for
18 those injuries as well.

19 Can you do that for me?

20 MR. LICHTERMAN: Yes, your Honor.

21 THE COURT: Can you provide a set of those records to
22 the plaintiff by tomorrow?

23 MR. LICHTERMAN: Yes, your Honor.

24 THE COURT: Mr. Muñoz, what you're going to get
25 delivered to you tomorrow is the passages from the medical

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1 records, your medical records, that the defendants believe are
2 relevant to the two lacerations and the two broken ribs. Then
3 if you agree that all of that is relevant, then we'll just have
4 a stipulation, and those records will come into evidence at
5 trial and the jury will be able to see them.

6 If you believe they're incomplete in any way -- and
7 perhaps it would be helpful, actually, for there to be a
8 discussion after this conference is over between defense
9 counsel and you, Mr. Muñoz, to make sure that you're on the
10 same wavelength as to what is relevant -- I want you to feel
11 free to tell Mr. Lichterman, and we'll work out any dispute
12 that might exist with respect to that.

13 Is that agreeable?

14 MR. MUÑOZ: That's agreeable, ma'am.

15 THE COURT: Good. The witnesses at trial are going to
16 be the plaintiff and the three defendants, Reid, Jones and
17 Flynn.

18 Let's go to the issue --

19 MR. LICHTERMAN: Your Honor, if I may briefly?

20 Defense counsel would like to call Sergeant Kelly as a
21 witness. We believe he has got some relevant information, even
22 though he is now not a defendant going forward.

23 THE COURT: Mr. Lichterman, is it the defense position
24 that he was present on the scene at the time the plaintiff was
25 handcuffed?

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1 MR. LICHTERMAN: Yes, your Honor.

2 THE COURT: I am not cutting him out then of this
3 case. He will remain a defendant.

4 MR. LICHTERMAN: Yes, your Honor.

5 THE COURT: We are going to have a four-defendant
6 case.

7 MR. LICHTERMAN: Yes, your Honor.

8 THE COURT: Let's turn to the exhibit list. We have a
9 list of the plaintiff's exhibits being a photograph of the
10 plaintiff taken after the incident. There is an objection by
11 the defendants as to relevance and authenticity. I don't
12 understand that objection.

13 MR. LICHTERMAN: Your Honor, if the photos are the
14 same photographs that we included on our exhibit list, we don't
15 have an objection to them. However, we're not clear exactly
16 how plaintiff intends to use them, which was those were the two
17 basic reasons for the objection.

18 THE COURT: Do you have copies of the photographs with
19 you?

20 MR. LICHTERMAN: Yes, your Honor.

21 THE COURT: After this conference, show the plaintiff
22 the photographs, see if he thinks there are any other
23 photographs that he wants to introduce. Try to work it out
24 with him. But I don't want objections that make no sense. I
25 think we worked through the medical records. The parties are

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1 in agreement that they are admissible.

2 Mr. Muñoz, I understand from the defendants' pretrial
3 statement that you want to offer an NYPD internal investigation
4 report. That report is not generally admissible. You have to
5 have a witness who testifies to something they saw, heard, felt
6 or said. Some investigator's report about what they found in
7 investigation is not generally admissible at trial. Do you
8 understand that?

9 MR. MUNOZ: You're talking to me, ma'am?

10 THE COURT: Yes, I am, Mr. Muñoz.

11 MR. MUNOZ: Those are the reporters that came in
12 supposedly and never had no type of audio. Is that what you're
13 referring to?

14 THE COURT: This wasn't in your pretrial statement.
15 Let me ask defense counsel. On page three of the defendants'
16 pretrial statement, you have a list of plaintiff's exhibits.
17 Where did you get that from?

18 MR. LICHTERMAN: That was from plaintiff's pretrial
19 statement. On page two of the plaintiff's pretrial statement,
20 under the first subheading, item number three lists NYPD
21 internal investigation reports.

22 THE COURT: Thank you. That is very helpful.

23 Mr. Muñoz, what NYPD internal investigation report do
24 you wish to offer into evidence?

25 MR. MUNOZ: I think that's the one where they came in

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1 it's supposed to be the bureau report investigation paper.
2 There is only three signatures on it. When I was incarcerated,
3 they came up with papers. They never had no type of audio,
4 none of that. So they took some of my story and they took some
5 of their story. They fabricated the internal affairs bureau
6 report. That is how I saw it.

7 THE COURT: OK.

8 MR. MUÑOZ: The attorney that was representing me, I
9 believe his name was Mr. Gregory Mouton, Jr., that made him
10 withdrew on my case automatically. He said I was contradicting
11 myself through that fabricated report. They never came into
12 the precinct with no audio or nothing like that. They just
13 came with pen and paper.

14 THE COURT: As I understand it, Mr. Muñoz, you don't
15 really want that report to come in at this trial because you
16 think it contains falsehoods; is that right?

17 MR. MUÑOZ: I'm really not sure. Like, I'm kind of
18 lost right here right now.

19 And also about the situation when you're saying
20 "objection," what do you mean when you say "objection?" Is it
21 permissible or not permissible? Is it allowed? When you were
22 saying Mr. Licherman was trying to object to pictures from the
23 hospital, what does that mean? Does that mean that they are
24 permissible? Are they going to be allowed or not? I have a
25 copy of all those pictures when I was hospitalized, and they

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1 don't look all that great.

2 THE COURT: I have a document, and I think you were
3 sent a copy of it, which is entitled defendants' pretrial
4 statement.

5 Do you have an extra copy, Mr. Lichterman --

6 MR. LICHTERMAN: I do, your Honor.

7 THE COURT: -- for the plaintiff?

8 Could you hand him that and turn to page three for him
9 so he knows what I'm talking about.

10 You'll see in the middle of page three, they have a
11 list of your exhibits. Then next to that, where they object,
12 and then next to that, the reason or basis for objection. Do
13 you see that?

14 MR. MUÑOZ: Yeah, I see it, ma'am.

15 THE COURT: I just ruled that the photographs will be
16 admitted at trial.

17 MR. MUÑOZ: OK.

18 THE COURT: After this conference, you're going to
19 talk with defense counsel and make sure that you agree as to
20 what the complete set of photographs should come in.

21 MR. MUÑOZ: OK.

22 THE COURT: If there is any disagreement, of course
23 I'll hear from you and make a ruling. Right now the
24 photographs taken of you after the incident are going to come
25 in at trial.

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1 The second exhibit are the medical reports. We
2 discussed that too. Those are coming in at trial, and you and
3 defense counsel are going to discuss precisely which pages and
4 which passages should come in to make sure there is no
5 disagreement there as well. OK?

6 MR. MUNOZ: OK.

7 THE COURT: We're up to item three, the NYPD internal
8 investigation report. You're going to have the four defendants
9 here to be able to ask them questions before the jury at trial.
10 Of course, defense counsel can ask you questions in front of
11 the jury when you're on the witness stand during the trial. Do
12 you understand that?

13 MR. MUNOZ: Yes, ma'am.

14 THE COURT: That's the kind of evidence that is
15 appropriate for the jury to hear and consider. Somebody's
16 report created after the fact is not generally admissible to
17 show what happened in the event. Only those people who were
18 involved in the event can really testify about it. Do you
19 understand that?

20 MR. MUNOZ: I understand.

21 THE COURT: Generally speaking, that kind of report,
22 the NYPD internal investigation report, is not appropriate as a
23 trial exhibit. Do you understand that?

24 MR. MUNOZ: I understand, ma'am.

25 THE COURT: Good. If you have a document that shows,

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1 just hypothetically -- I haven't seen this report, I am just
2 giving you an example -- let's say that report included a
3 statement from Officer Reid and you thought that statement
4 contradicted his trial testimony, you could look at that
5 report, read it to yourself, and ask Officer Reid at trial,
6 Officer Reid, didn't you tell an investigator a month after
7 this accident something very different? Didn't you tell them
8 XYZ?

9 Do you understand what I'm saying?

10 MR. MUNOZ: Yes, I understand, ma'am.

11 THE COURT: But the report itself does not come into
12 evidence. OK?

13 MR. MUNOZ: OK.

14 THE COURT: The next three exhibits that you've
15 discussed, the videotape and two sets of photographs, as I
16 understand it both from you and from defense counsel, they do
17 not exist. They were never located, so those cannot be offered
18 as evidence. OK?

19 MR. MUNOZ: I mean, why they can't be presented, when
20 that store has cameras and the civilian cameras? I believe
21 they lead to the precinct.

22 THE COURT: Well, during discovery there was an
23 opportunity to try to obtain evidence, and no photographs or
24 videotape from the scene of the accident was ever located. So
25 they are not available to offer as evidence at this trial. OK?

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1 MR. MUNOZ: I believe that evidence was destroyed or
2 taken by these officers. That's just my belief.

3 THE COURT: I appreciate that's your belief.

4 Mr. Lichterman, do you want to respond to that with
5 respect to any search made for the videotape or the photographs
6 at the store?

7 MR. LICHTERMAN: Yes, your Honor. A search was
8 conducted. Numerous efforts were made to try and locate and
9 identify any video footage related to the incident. Our
10 understanding is there weren't any actual recording devices in
11 the store at the time of the incident. I think there may have
12 been a camera with a live feed, but no recording devices.

13 THE COURT: So it didn't store images?

14 MR. LICHTERMAN: Correct.

15 THE COURT: Then we go to the last plaintiff's
16 exhibit, which is transcripts of testimony of Defendants Reid,
17 Jones, and Flynn at pretrial proceedings.

18 Mr. Lichterman, what does this refer to?

19 MR. LICHTERMAN: I believe it refers to one of the
20 pretrial proceedings in which --

21 THE COURT: What pretrial proceeding? Were they
22 deposed in this case?

23 MR. LICHTERMAN: No, in the underlying criminal case.
24 They were not deposed in this case. Pretrial proceedings in
25 the underlying criminal case. Officer Reid and Officer Flynn

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1 had testified during those proceedings, and I believe that is
2 the reference to this. I don't believe that Officer Jones
3 testified in any of the criminal proceedings.

4 THE COURT: What kind of hearing was it that required
5 their testimony? What was the issue?

6 MR. LICHTERMAN: I don't recall offhand exactly what
7 the issue was. I believe it was some type of -- it was related
8 to admitting some evidence. I don't recall the specifics
9 exactly.

10 THE COURT: Do you have copies of that?

11 MR. LICHTERMAN: I do.

12 THE COURT: I want you to review them. I want you to
13 get copies of that testimony to the plaintiff for the trial.

14 MR. LICHTERMAN: Yes, your Honor.

15 THE COURT: I want you to be in a position to explain
16 to me what the subject of the Reid and Flynn pretrial,
17 pre-criminal trial testimony involved.

18 MR. LICHTERMAN: Yes, your Honor.

19 THE COURT: Mr. Muñoz, we will get you copies of this
20 testimony. Do you have it with you already, Mr. Muñoz?

21 MR. MUNOZ: I'm not sure. Once again, like I said,
22 they snatched me, really they surprised me at Fishkill
23 Correctional Facility. The date was supposed to be March 20.
24 I got two letters, two pieces of mail here, and it's from
25 Mr. Lichterman and Ms. Depoian and Zach Carter, right. They

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1 were saying that they were supposed to reschedule. It was
2 supposed to be, from my knowledge, there was going to be a
3 legal phone conference. I didn't know it was going to be a
4 physical one.

5 So they surprisingly took me out of work Monday and
6 brought me here. I've been here ever since Monday. So I had
7 two correction, two New York State correction officers with me,
8 and I left all my belongings. Everything was just a surprise
9 for me. I had to grab what I can grab, so I had a couple of
10 law work with one bag, but the rest was scattered around
11 because I am trying to study this case. I am not sure. I
12 don't know what I have by memory.

13 THE COURT: I'll make sure defense counsel gives you
14 additional copies. You can offer at trial prior sworn
15 testimony or prior statements of a defendant, but it has to be
16 relevant to the issues on trial, just like they can offer at
17 trial prior statements of yours that are relevant to the issues
18 at trial. Keep that in mind.

19 Indeed, the defendants, as one of their exhibits, want
20 to offer the deposition that they took of you in this case. To
21 the extent there are passages in prior testimony and a court
22 hearing or in a deposition by one of the parties, then those
23 can be offered at trial by the adversary, to the extent they're
24 relevant. You can also refer to that testimony in examining a
25 witness. If they say something inconsistent or if you want

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1 them to admit that they said some fact in the past, you can
2 refer to that as well.

3 Let's turn to the issue of precisely what medical
4 records might be relevant here. As I understand it, the most
5 relevant medical records are the records from Jacobi Hospital.
6 There are also references in the parties' submissions to
7 records from the New York City correctional facility and
8 Medicaid records.

9 Mr. Lichterman, do the correctional health records or
10 the Medicaid records refer in any way to the two lacerations or
11 broken ribs?

12 MR. LICHTERMAN: No, they do not, your Honor.

13 THE COURT: Mr. Muñoz, do you think that the
14 correctional health records or the Medicaid records refer to
15 the two lacerations or the broken ribs?

16 MR. MUÑOZ: Jacobi Hospital has medical records of all
17 my injuries when I was --

18 THE COURT: We are going to admit the Jacobi Hospital
19 records.

20 MR. MUÑOZ: When I was in Rikers Island, because I had
21 did a crime, so I am incarcerated. I am a prisoner. I was in
22 Rikers Island. I was an inmate there. They attended me. They
23 gave me medication. They told me my two ribs were fractured.
24 They had to heal on their own, really. The fracture is what
25 healed on its own. I already had the stitches on my left eye

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1 and my right arm, which they removed from my left eye and
2 removed from my right arm. There has got to be medical records
3 at Rikers Island that they obtained my stitches. I can't take
4 my own stitches out myself, so there has to be medical records
5 that I have those injuries.

6 THE COURT: Mr. Lichterman, I would ask you to review
7 the records from the the correctional facility for plaintiff's
8 medical care in the weeks following the date of the injury here
9 and try to identify any passages that may be relevant and share
10 those with the plaintiff. Will you do that?

11 MR. LICHTERMAN: Yes, your Honor.

12 THE COURT: Let's turn to the defendants' exhibit
13 list. They also want to offer the relevant photographs of the
14 plaintiff and the plaintiff's deposition. We have already
15 talked about those issues. They want to offer the transcripts
16 of the plaintiff's testimony before the internal affairs issue.
17 I assume that is about this incident, is that right?

18 MR. LICHTERMAN: That is right, your Honor.

19 THE COURT: That would be admissible. Then you list
20 the audio recording of the plaintiff's testimony. Is that the
21 same testimony as reflected in the transcript?

22 MR. LICHTERMAN: Yes, it is, your Honor.

23 THE COURT: Is the audio recording difficult to
24 understand when listening to it?

25 MR. LICHTERMAN: You can hear the voices. There is

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1 some background noise and such, but you can make it out. The
2 transcript was made from the audio, so to the extent anything
3 is not clear, the transcript would make it clear.

4 THE COURT: I want you to share with the plaintiff
5 this week those portions. I want you to give him a copy of the
6 complete transcript and mark those portions you want to offer
7 at trial as an exhibit.

8 MR. LICHTERMAN: Yes, your Honor.

9 THE COURT: Mr. Muñoz, you're going to get the
10 transcript of all of your testimony both from the deposition
11 and from the internal affairs bureau testimony, and the defense
12 counsel are going to mark which passages they want to read to
13 the jury or provide to the jury.

14 If you think there are other related passages that
15 should be offered as well, you'll have a chance to point those
16 out to defense counsel because there's a doctrine about
17 completeness. If you give the jury some evidence on a topic,
18 you have to give them all the evidence on that topic. You
19 can't just give one sentence when there are two sentences about
20 that topic. Do you understand what I'm saying?

21 MR. MUNOZ: I understand, ma'am.

22 Now, back to the audio, which audio is he referring
23 to? Is he referring to the audio of the internal affairs
24 bureau report? Is he referring to that audio that he has to
25 provide?

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1 THE COURT: He is referring to the audio of the
2 internal affairs bureau inquiry, but they have a transcript of
3 what they believe the audio reads or says. I don't know what
4 recording equipment you have available to you in the prison. I
5 know you can get a copy of the transcript.

6 MR. MUNOZ: The reason why I'm bringing that up is
7 because if it's in the first bureau report, if they are
8 supposed to come interview a prisoner or the word inmate, as
9 I am, and they are supposed to let me see the video, if it's a
10 hidden video, hidden audio, because at the time when they came,
11 I did not see them record me or I didn't see a tape recorder on
12 the desk or nothing like that.

13 What I'm trying to get at is, they came with pen and
14 paper, so how can there be an audio? If there was an audiotape
15 recording of my voice, it must have been hidden, and I don't
16 think that is kind of -- how do you say -- what's another word
17 for legit?

18 THE COURT: Fair?

19 MR. MUNOZ: Yeah. I don't think that's fair.

20 If you're supposed to interview me, you are supposed
21 to be truthful to me and tell me I am going to record you. And
22 it's like right now, in the prison where I'm at, if I catch a
23 disciplinary, the lieutenant puts out a recorder and he records
24 me. It is a visible one. If there is an audio and I am saying
25 I did not see one, then it must have been on hidden audio

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1 because they -- I saw them with pen and paper. I did not see
2 no audio. It wasn't a visible one. If there was one, I don't
3 think that was fair.

4 THE COURT: Well, can you tell me, Mr. Lichterman,
5 does the transcript or the audio recording itself reflect
6 notice to the plaintiff that is a recording is being made?

7 MR. LICHTERMAN: I don't recall specifically whether
8 they mentioned that was being recorded. They did identify,
9 that I do recall, that plaintiff was giving a statement to the
10 internal affairs bureau related to the incident. We did
11 produce a copy of it to plaintiff during the discovery.

12 THE COURT: It occurs to me, Mr. Lichterman, that some
13 of these issues are really admissibility issues in terms of
14 authentication. Documents can be used to cross-examine a party
15 without being received in evidence, obviously. Perhaps that is
16 what we should do with respect to the plaintiff's deposition
17 and the transcript of the internal affairs bureau, unless you
18 have a witness who could authenticate them or get an agreement
19 from the plaintiff they're coming into evidence. Do you
20 understand that I'm saying?

21 MR. LICHTERMAN: Yes, your Honor. Our intention, I
22 believe, is to use them primarily for impeachment purposes.

23 THE COURT: Fine. Your next exhibit is the grand jury
24 indictment. I don't believe that is admissible at trial. Then
25 you have the Jacobi Hospital records. We have already

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1 discussed those. Everyone agrees those should come in. Then
2 you list psychological and drug treatment records. I don't
3 know what those are specifically.

4 MR. LICHTERMAN: Yes, your Honor. Plaintiff has
5 various mental illnesses that he testified about related to
6 this case. We believe that those, both about diagnosis of his
7 mental illnesses as well as treatment and medications and such,
8 including for drug treatment, directly goes to the heart of the
9 issues in this case.

10 THE COURT: But I need to know, and the plaintiff
11 needs to know more than I do, precisely what records you're
12 referring to. What period of time? What providers? Whose
13 records? Do you have copies of those that you plan to offer?

14 MR. LICHTERMAN: I do, your Honor.

15 THE COURT: From what period of time? What is the
16 date spread?

17 MR. LICHTERMAN: I believe it was a few years prior to
18 the incident up to a few years after the incident. There were
19 a few different providers. During the course of discovery,
20 Judge Freeman had limited access to what defendants could
21 access.

22 THE COURT: I read that, but you don't get to offer
23 into evidence at trial everything you get discovery on. You
24 need to isolate precisely what records you want to offer at
25 trial and share those with the plaintiff.

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1 Do you have precisely what records you want and what
2 providers?

3 MR. LICHTERMAN: We've identified the group of
4 documents. Primarily we want to use these documents for
5 impeachment purposes, again, to the extent plaintiff, depending
6 on his testimony in the case.

7 THE COURT: I don't need to rule on admissibility of
8 impeachment materials. So it's more impeachment purposes.
9 It's fine. We can move on.

10 The next thing that is listed as a defendants'
11 exhibit, that is an arrest report. That is not admissible.
12 That is in evidence as a document at trial. The next record is
13 an NYPD complaint report. That is not admissible. The next
14 record is a certificate of disposition. Is that for the armed
15 robbery here?

16 MR. LICHTERMAN: Yes, your Honor.

17 THE COURT: That would be admissible.

18 MR. MUNOZ: Your Honor, can I interject, with all due
19 respect?

20 THE COURT: Yes.

21 MR. MUNOZ: The documents that he is trying to provide
22 on the psychiatric issues are programs that I was, when I was
23 out in society, that I was in those programs because I was on
24 parole. I was in sort of like a mental illness program where
25 you gave your freedom and you have to abide by the rules, and

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1 one of their rules were for me to go to an outpatient -- it's
2 an outpatient mental illness program. Most of the programs
3 that I was there, at the times I was taking medications, they
4 were all past way before the incident of the date that I did
5 the crime. However, I was still on psychiatric medication that
6 was not taken. There were -- actually, this was kind of
7 lowered. I knew exactly who I was, how I got on the train,
8 etc., etc. The medications that I was taking didn't make me
9 malfunction. I was functioning very well.

10 Now, the other issue about the drugs, that's what the
11 program was about. That is why I was going to the program, so
12 I could get cleaned up, because at that time, I was active in
13 using drugs.

14 THE COURT: Thank you. The defendants will be able to
15 inquire about your mental condition, including any psychiatric
16 medications you were on or supposed to be taken at or around
17 the time of the incident of September 2011, as well as any
18 illegal drug use at or around that time, because obviously your
19 mental state could have affected your ability to, first, even
20 remember what happened at the date, if you were not able to
21 think clearly or under the influence of drugs inappropriately.

22 Similarly, with respect to the time of the trial this
23 week, are you taking medication now?

24 MR. MUÑOZ: I am no longer taking psychiatric
25 medications, ma'am. I am just on diabetic medication and I

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1 also take asthma medications. Other than that, no.

2 THE COURT: I need to understand, Mr. Lichterman, with
3 precision what you want to establish at trial with respect to
4 the plaintiff's mental state on or around September 2011.

5 MR. LICHTERMAN: Yes, your Honor.

6 THE COURT: I need dates, I need medications, I need
7 diagnoses. Do you have those for me now?

8 MR. LICHTERMAN: We have his diagnoses and
9 medications. I don't have the specific page references.

10 THE COURT: Do you have the dates?

11 MR. LICHTERMAN: At the time, it's our understanding
12 that at the time of this incident, he had current diagnoses for
13 paranoid schizophrenia, anxiety, depression, and substance and
14 drug abuse.

15 THE COURT: I think what I need is precision here. I
16 need to understand and the plaintiff needs to understand what
17 you're basing that on is diagnosis by whom, when, what
18 medications, how this relates to September of 2011. Do you
19 understand what I'm saying?

20 MR. LICHTERMAN: Yes, your Honor.

21 THE COURT: Can you get me a letter tomorrow,
22 Thursday, with that precise description?

23 MR. LICHTERMAN: Yes, your Honor.

24 THE COURT: Thank you.

25 The next thing you want to offer is the plea

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1 allocution. I take it that's the plea to the armed robbery
2 that is the subject of the certificate of disposition, is that
3 right?

4 MR. LICHTERMAN: Yes, your Honor.

5 THE COURT: The plea allocution does not come in. If
6 you believe that there is something precisely in the plea
7 allocution to add beyond the certificate of disposition, you're
8 going to have to justify that to me.

9 The gun, I think that would be admissible. It's part
10 of the story of what happened at the time of arrest and just
11 preceding the alleged use of excessive force.

12 The Sprint report, I take it that's the 911 call that
13 required the officers to respond to the scene; is that right?

14 MR. LICHTERMAN: Yes, your Honor.

15 THE COURT: Do you have a transcript of it?

16 MR. LICHTERMAN: Yes, your Honor.

17 THE COURT: Do you have one to hand up for me and do
18 you have one for the plaintiff?

19 MR. LICHTERMAN: We do.

20 THE COURT: You can hand that to my clerk and hand
21 that to the plaintiff.

22 MR. LICHTERMAN: I only have one copy on me.

23 THE COURT: Give it to the plaintiff then. I'll need
24 a copy too in order to rule on these things.

25 MR. MUÑOZ: Your Honor, can I interject?

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1 THE COURT: Yes.

2 MR. MUÑOZ: Mr. Lichterman sent me a copy of a Sprint
3 form. I guess it was the individual who I robbed, and it had
4 nothing on it. It just said Sprint 911, that was it. It had
5 no type of writing on it or nothing like that.

6 THE COURT: Well, he is going to give you another copy
7 right now.

8 Mr. Lichterman, you're going to provide me a copy
9 tomorrow?

10 MR. LICHTERMAN: Yes, your Honor.

11 THE COURT: The plaintiff's complaint, I don't think
12 that is coming into evidence, or the amended complaint or the
13 plaintiff's memorandum of law. These last three exhibits might
14 theoretically be used for impeachment purposes, but they are
15 not going to be admitted by themselves as defense exhibits.
16 All right?

17 MR. LICHTERMAN: Yes, your Honor.

18 THE COURT: Let me read for you what I am going to
19 instruct the jury at the time we're choosing the jury. I would
20 like everyone to listen carefully to see if what I'm about to
21 tell the jury on Monday morning seems accurate and appropriate
22 to you. It is a little bit long, so I am going to read it
23 slowly once. Don't try to take it all down. Then I'll read it
24 again and pause. I am going to read this twice.

25 The plaintiff in this case, that is the person

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1 bringing the claims, is Nehmias Muñoz. Mr. Muñoz, do you
2 pronounce your name Nehmias?

3 MR. MUNOZ: It is Nehemiah in English and it is
4 Nehmias in español.

5 THE COURT: Nehmias?

6 MR. MUNOZ: Nehmias it is in Spanish and the English,
7 biblical name is Nehemiah in English, and Nehmias in español.

8 THE COURT: Nehmias Muñoz. His claims arise out of
9 events that occurred on September 13, 2011, in the Park Chester
10 area of the Bronx. On that day he committed an armed robbery
11 and was arrested. At the time of the arrest, the plaintiff had
12 a gun. He later pleaded guilty to robbery. These events are
13 not in dispute at this trial. This trial concerns something
14 else. Mr. Muñoz asserts that after the arresting officers had
15 subdued him and placed handcuffs on him, he was beaten and
16 injured. He contends that the injuries he sustained from that
17 beating caused lacerations and broken ribs. He has sued the
18 four police officers who were present at the time of his arrest
19 to recover damages from them for those injuries.

20 So far does that seem right, Mr. Muñoz?

21 MR. MUNOZ: Yeah, that seems to be right.

22 THE COURT: I am going to continue then.

23 There will also be evidence introduced at trial that
24 Mr. Muñoz had received treatment for a drug addiction and
25 mental health problems.

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1 This I am going to revise once I get a statement from
2 the defendants that I more clearly understand what may be more
3 admissible. I am continuing now.

4 Every person, whether they committed a crime or not
5 and whether they have health problems or not, is protected by
6 our Constitution. The police may not use excessive force
7 against anyone in making arrests. While it may be necessary to
8 use force in making an arrest, any force used at the time of an
9 arrest must be reasonable in light of the facts and
10 circumstances that existed at the time of the arrest. The jury
11 chosen in this trial must decide whether the police used
12 excessive force against Mr. Muñoz, and if they did, whether any
13 injuries that Mr. Muñoz may have sustained at the time of his
14 arrest were caused by the use of that excessive force.

15 Mr. Muñoz is proceeding pro se, that is, representing
16 himself. He is currently incarcerated as a result of his
17 robbery conviction. I instruct you that the protections
18 provided by our Constitution apply to sentenced prisoners just
19 as much as they apply to those who never committed a crime and
20 who are not incarcerated. Every person in this country is
21 entitled to be free from the excessive use of force by the
22 police. In addition, every person who believes that he has a
23 claim that can be redressed in court is entitled to bring a
24 lawsuit and represent himself in that lawsuit. You are not to
25 treat Mr. Muñoz any differently than you would any other

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1 litigant simply because he is representing himself. His claims
2 arise from a time when he committed a crime. He is currently
3 incarcerated. All litigants in this court are equal and all
4 are entitled to the full protection of our law.

5 This case concerns events that occurred on
6 September 13, 2011. It is not about other incidents on other
7 dates concerning other individuals in which the police have
8 been accused of using excessive force. If chosen as a juror,
9 you must base your verdict solely on the evidence received at
10 this trial regarding the plaintiff's claim that the defendants
11 used excessive force against him on September 13th, 2011, and
12 in doing so, injured him on that day.

13 Now, I said I would read this a second time, but we'll
14 put that off until Monday because it's already getting late and
15 we have a lot more to cover. I am going to give you a second
16 chance to request changes.

17 So far, Mr. Muñoz, did what I read sound OK to you?

18 MR. MUÑOZ: Yes, ma'am. But I also want to address
19 also, due to the fact for my injuries, now my left eye, my
20 vision is not all that great. I lost a lot of vision to my
21 left eye. Basically, I need reading glasses. I was all right
22 a couple years when I started losing my vision. And my left
23 knee is not all that great either. That's due to the injuries,
24 because when I got through the excessive force, they never
25 checked my legs. They only checked from my waist up. I just

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1 wanted to put that, that is also in New York State DOCS
2 medical, on my medical. Other than that, everything, it's OK.
3 So far, so good.

4 THE COURT: Mr. Lichterman.

5 MR. LICHTERMAN: Yes, your Honor. It's my
6 understanding that the only injuries related to this incident
7 that plaintiff is claiming or claimed throughout this case are
8 the ones that you identified previously. We are not aware from
9 any of the documents in our possession of any of these
10 additional injuries. Plaintiff hasn't identified any of those
11 and we don't believe those should be part of this case.

12 MR. MUÑOZ: Your Honor, can I interject?

13 THE COURT: I'll read you again the complaint. Excuse
14 me one second.

15 MR. MUÑOZ: Your Honor, can I interject?

16 THE COURT: Hold on just one second. I want to look.

17 In the plaintiff's pretrial statement, he lists as his
18 injuries two fractured ribs, partial loss of vision in his left
19 eye, bleeding cuts on my left eyebrow that required stitches,
20 one cut on my right forearm that required six stitches, and
21 other smaller cuts and bruises. It took approximately two
22 months for my fractured ribs to heal. I was in severe pain for
23 many months and continue to this date to experience severe
24 headaches that I did not experience before the incident.

25 This is the statement, Mr. Muñoz, that you gave in

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1 February in preparation for this trial. There is no reference
2 in that statement to your knee, so your knee is not going to be
3 part of this trial. Let me explain why, Mr. Muñoz.

4 MR. MUNOZ: OK.

5 THE COURT: As you know, you filed this lawsuit in
6 2014.

7 MR. MUNOZ: Yes, ma'am.

8 THE COURT: You filed a complaint.

9 MR. MUNOZ: Yes, ma'am.

10 THE COURT: Everybody takes discovery after that. If
11 I can find a copy of the complaint and look at the injuries
12 claimed in the compliant. You identified what your injuries
13 are and people get a chance to take discovery with respect to
14 those.

15 MR. MUNOZ: OK.

16 THE COURT: You can't change that list, except for
17 very good cause and with permission of the court, because on
18 the eve of trial, it is too late to open discovery and examine
19 a new set of injuries that are claimed.

20 MR. MUNOZ: Your Honor.

21 THE COURT: In your complaint, this is what you said
22 at page 31: Two fractured ribs, a cut near your left eye that
23 required stitches, and a cut on your right arm that required
24 stitches. There was no reference to a loss of vision, the need
25 for reading glasses, or anything about the left knee.

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1 Mr. Muñoz.

2 MR. MUNOZ: When Mr. Lichterman came to visit me in
3 Clinton Correctional Facility, I had no attorney available. It
4 was just him and a stenographer. I did mention to him about
5 the vision, the loss of vision of my eye, and I did mention to
6 him my left knee. I did mention that to him.

7 THE COURT: That's in your deposition?

8 MR. MUNOZ: Yeah. He probably didn't write that down
9 because I surely did mention that to him.

10 THE COURT: Mr. Lichterman, was the deposition taken
11 of the plaintiff?

12 MR. LICHTERMAN: Yes, a deposition was taken of the
13 plaintiff.

14 THE COURT: And in that deposition, did he describe
15 his injuries?

16 MR. LICHTERMAN: He did. I don't recall offhand
17 whether he mentioned anything about a loss of vision or his
18 knee.

19 THE COURT: Would you review that and write tomorrow
20 to advise me regarding that?

21 MR. LICHTERMAN: Yes, your Honor.

22 THE COURT: And advise the plaintiff as well.

23 The defendants' motions in limine five, it's unclear
24 to me what some of these refer to. Let's take them one by one.
25 The first has to do with the fact that the plaintiff is suing

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1 just the four individual defendants and not the City of New
2 York, and that the jury, it's irrelevant to the jury whether or
3 not the City of New York may some day down the road indemnify
4 an individual defendant for any damages that are awarded
5 against a defendant in favor of the plaintiff.

6 I want to just make sure you understand, Mr. Muñoz,
7 that the sole defendants here are the four individual
8 defendants. Do you understand that?

9 MR. MUNOZ: Can you kind of, like, make that a little
10 clearer? What you're trying to tell me is that --

11 THE COURT: Sure. You're asking the jury to find that
12 one or all of these four defendants violated your rights by
13 using excessive force against you, and if you find that, you're
14 asking them to award money to you. Do you understand that?

15 MR. MUNOZ: Yes, I understand.

16 THE COURT: You can't argue that it's the City of
17 New York who is going to pay you money. It is these four
18 individual defendants. Do you understand that?

19 MR. MUNOZ: But I thought that New York NYPD belongs
20 to New York City?

21 THE COURT: The NYPD is part of New York City. It is
22 our police force. But you have not sued the City. To the
23 extent that you tried to sue the City, that claim has been
24 dismissed. The only claims at trial here are against these
25 four individual officers. OK?

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1 MR. MUNOZ: Why was the claim to sue the City
2 dismissed?

3 THE COURT: Judge Torres wrote about that. These are
4 complicated legal issues, but the bottom line is that an
5 individual officer who uses excessive force against a person is
6 personally liable for doing that. The City is not
7 responsibility unless the City was responsible because there
8 was a pattern or practice of using excessive force in the way
9 that was used against you. Judge Torres looked at that claim
10 and dismissed the claim against the City of New York. OK?

11 MR. MUNOZ: So she favored the NYPD, in other words?

12 THE COURT: No. She left the four defendants in here.
13 You are going to trial against the four defendant officers.
14 OK?

15 MR. MUNOZ: OK, ma'am. Thank you for clearing that
16 for me.

17 THE COURT: She just applied the law.

18 The next thing, the next motion is about disciplinary
19 histories and prior misconduct. What are we talking about
20 here, Mr. Lichterman? I have no idea what you're referring to.

21 MR. LICHTERMAN: Yes, your Honor.

22 During the course of discovery, CCRB records were
23 produced to plaintiff. Those records, and to the extent
24 plaintiff wants to discuss anything in those records or
25 anything related to the office, any allegations against the

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officer related to prior misconduct, that is specifically what we are referring to that we would like for him to be precluded from discussing.

THE COURT: I want you to discuss this with Mr. Muñoz at the end of today's conference and see if this is an issue.

MR. LICHTERMAN: Yes, your Honor.

THE COURT: The next issue is, I think, irrelevant. It is that the plaintiff should be precluded from arguing that any force used against him in order to recover the gun and handcuff him was excessive. His claim is that the excessive force was used after he was handcuffed.

The next argument is that you should be able to cross-examine him about his mental illness and treatment. Again, theoretically, yes, but you need to define with specificity what you want to ask him about and I have to be able to rule that it is relevant to an issue of credibility or otherwise for the jury. You're going to provide a letter to me tomorrow.

MR. MUNOZ: Your Honor.

THE COURT: Yes, Mr. Muñoz.

MR. MUNOZ: Mr. Lichterman is trying to get at the point where he is trying to say that the mental illness and because of my drug addiction, he is trying to pinpoint, in other words, making me seem like drugs don't last in the system. In other words, I was high on crack, I admitted it,

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1 but crack don't last that long in the system.

2 So by the time when I was in the store, I knew exactly
3 that I had robbed somebody and I knew exactly that I was
4 turning myself in by replacing the firearm in my left pocket
5 with the nose pointing down and the finger off the trigger, and
6 at no point of view I had that firearm pointing towards
7 endangering the life of an officer.

8 So what Mr. Lichterman is trying to get to a point
9 where he is trying to say that because of my drug addiction and
10 my mental illness, because it is a part of me, he is trying to
11 make it seem like, in other words, that I didn't know what I
12 was doing at that time when the officers was there and I didn't
13 know what I was saying. That is what he is trying to get at,
14 because he tried, when he went to Clinton for the hearing --

15 THE COURT: I am going to interrupt you, Mr. Muñoz,
16 because we have so many talks yet to cover. There are more
17 things I want to make sure you understand. But you're
18 absolutely right, and thank you for pointing that out. That is
19 what he is going to try to establish at trial, and you're going
20 to have an opportunity to explain to the jury at trial why
21 that's inaccurate and that you fully understood what was
22 happening at the time and can remember it. The jury is going
23 to have these two versions and two sets of arguments and they
24 are going to have to make a decision. OK?

25 MR. MUNOZ: Yes, ma'am.

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1 THE COURT: We are going to get a letter tomorrow,
2 which will be delivered to you, which will be more precise
3 about what evidence and arguments with respect to drug use and
4 mental illness the defendants are going to try to rely on at
5 trial. I am going to rule yes or no with respect to each of
6 the identifies issued.

7 Then there is the last motion in limine to cross the
8 plaintiff about his prior convictions. Obviously the
9 conviction for the robbery is admissible. It can come in with
10 respect to the offense of conviction, the date conviction was
11 imposed, and the sentence imposed as a result of the
12 conviction.

13 To the extent that the defendants want to say that
14 this plea was in full satisfaction of numerous arrest charges,
15 as well as two subsequent arrests, that is not admissible.
16 There are two convictions, as I understand it, the 2013
17 conviction for robbery and the 2006 conviction for criminal
18 sale of an illegal substance.

19 What was the sentence for the 2006 conviction?

20 MR. LICHTERMAN: That was 30 months, your Honor.

21 THE COURT: That brings us within the ten-year period?

22 MR. LICHTERMAN: Yes, your Honor.

23 THE COURT: You can inquire of the plaintiff with
24 respect to that conviction as well, but again, the offense of
25 conviction, the sentence imposed, and nothing more.

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1 MR. MUNOZ: Your Honor, can I interject with the 2013
2 crime that I committed --

3 THE COURT: Yes.

4 MR. MUNOZ: -- was an undercover who gave me money to
5 purchase narcotics and I took his money. That has nothing to
6 do with no robbery, compared to the armed robbery that I did.
7 It was a dropoff. It was supposed to be a buy-and-bust, for me
8 to take the money and buy drugs and then charge as sales. That
9 was in 2013. I believe it got acquitted with the 2011 crime,
10 when I took the ten years. That has nothing to do with no
11 robbery. The only robbery I have on my record, really, this is
12 the armed robbery that I committed in 2011, and I regret it.

13 THE COURT: Mr. Lichterman, in your letter of
14 tomorrow, list precisely which convictions you wish to offer at
15 trial as impeachment or question the plaintiff about at trial
16 so we have precision here. OK? Again, the offense of
17 conviction, the date of conviction, the sentence imposed.

18 MR. LICHTERMAN: Yes, your Honor.

19 THE COURT: Thank you.

20 So now I am going to speak to you, Mr. Muñoz, a little
21 bit about how the trial is going to operate. It is going to
22 start Monday. We will meet Monday at 9:30. We will have about
23 a half hour to discuss any open issues with each other.

24 We are going to choose a jury. We are going to choose
25 eight jurors. I am going to give them each a questionnaire and

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1 ask questions of them, and then each of you will have an
2 opportunity to identify three people you don't want to sit on
3 the jury.

4 MR. MUNOZ: That's pertaining to me or to the counsel?

5 THE COURT: Both. You get to name three people you
6 don't want on the jury, and the defendants get to name three
7 people they don't want on the jury. We are going to put in the
8 jury box 14 people and six of them are going to be excused,
9 three that you choose to strike and three that the defendants
10 choose to strike. We are going to be left with eight people.

11 After we choose a jury, everybody is going to have a
12 chance to make an opening statement. You will, Mr. Muñoz, and
13 so won't defense counsel.

14 MR. MUNOZ: Repeat that, please, your Honor.

15 THE COURT: Sure.

16 After we pick a jury, you get a chance to talk to the
17 jury and make an opening statement. This is your chance to
18 tell the jury what you think the evidence is going to show.
19 Then defense counsel gets to stand up and make an opening
20 statement and describe to the jury what the defense thinks the
21 evidence is going to show.

22 After those two statements, you, Mr. Muñoz, get to
23 call witnesses. Do you know yet if you want to take the stand
24 first or if you want to call the officers first as witnesses?

25 MR. MUNOZ: I believe I'll take it first.

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1 THE COURT: I am going to give you some suggestions
2 about that in just a few moments. I just want to describe the
3 structure.

4 You're planning to call each of the officers as
5 witnesses or not on your case?

6 MR. MUÑOZ: Yeah. I want all the officers to be
7 present.

8 THE COURT: Good. You're going to be call each of
9 them. If you do, that will probably be the whole trial. But
10 the defense, if you don't, will be able to call any officer you
11 don't call of these four. Your choice entirely.

12 Then after all the evidence is in, you will get a
13 second chance to talk to the jury directly, that is called
14 summation or closing argument, and so will defense counsel have
15 a chance to talk to the jury directly. That is called, again,
16 closing argument or summation.

17 Because you have the burden of proof here, Mr. Muñoz,
18 to prove that the officers used excessive force against you,
19 you will speak to the jury last. Then I am going to give the
20 jury the charge as to the law, and then they will deliberate
21 and reach a verdict. That is sort of the outline of the whole
22 trial, OK?

23 Now let me talk to you a little bit about some things
24 to keep in kind when you're representing yourself at trial. I
25 think it's often helpful to think about this as wearing two

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1 hats. One hat you will be testifying to the jury under oath
2 from the witness stand, giving them your best recollection of
3 what happened, describing for the jury what injuries you
4 suffered, how you got them, and how they affect you. That is
5 witness testimony.

6 I think it would be very helpful probably for you to
7 make an outline of all the topics you want to cover. Not to
8 write out your testimony, but just to make sure that you cover
9 each important event that you want to tell the jury about.
10 Then you can take that piece of paper and look at it on
11 occasion when you're talking to them and make sure that you
12 have covered everything that is important for you to tell them.

13 MR. MUÑOZ: So, in other words, I can put them in
14 order, my arguments, and I'll be able to look at my paper and
15 make sure that I can cover all the arguments that I need to
16 proceed?

17 THE COURT: Yes, though I wouldn't call it arguments.
18 This is the chance when you're under oath on the witness stand
19 to describe the facts, what you saw, what you felt, what you
20 heard, what you said that is relevant to the charges here. You
21 could give the jury a little background about your life, if you
22 would like. You can describe for them how that -- I am just
23 using an example here -- how it felt to have those two broken
24 ribs and how long it took for them to heal. But that's the
25 time when you're speaking factually to them about something you

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1 know because you certainly experienced it. OK? It's under
2 oath.

3 MR. MUNOZ: When will I know when to say that?
4 Because, here I go again, I don't have a lot of legal knowledge
5 here. I am pro se and this is my first time. How would I know
6 when to say that?

7 THE COURT: Well, I am going to help you that way in
8 this section. I just asked you if you wanted to testify first
9 or call an officer to testify first, and you told me you would
10 like to testify first. After opening statements are done, I
11 will ask you, Mr. Muñoz, do you want a witness to call on your
12 behalf? You will say to me in open court in front of the jury,
13 Your Honor, I would like to testify first. Then you'll walk up
14 here and take the witness stand. I'll place you under oath,
15 swear you in. You'll sit down, you'll face the jury, and
16 you'll give them your testimony. Do you understand?

17 MR. MUNOZ: Sort of like a story of what happened that
18 day?

19 THE COURT: You've got it.

20 MR. MUNOZ: Yes, ma'am.

21 THE COURT: Good. Again, I think it is very helpful,
22 because you won't have a lawyer placing questions to you, to
23 make, just on one piece of paper, an outline to make sure that
24 you cover everything that you want to tell the jury about what
25 happened that day or about your life generally. But the focus,

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1 of course, is on the events of that day and the injuries you
2 suffered. That's one hat you're wearing. You're wearing the
3 hat of the person that experienced those events that day. You
4 give that testimony to the jury under oath.

5 But there is a second hat you're wearing at this
6 trial, and that is you're representing yourself like a lawyer
7 would represent you. When you're doing that, you get a chance,
8 for instance, to speak to the jury in an opening or closing
9 statement or to ask the defendants questions when they take the
10 stand.

11 Now, this is a very important distinction, and I want
12 to make sure I am explaining it to you in a way that you can
13 understand, Mr. Muñoz. The only time you can tell the jury
14 precisely what happened on that day is when you're under oath
15 and testifying from that witness stand. Do you understand
16 that?

17 MR. MUÑOZ: Yes. When I approach as the first
18 witness, right, ma'am?

19 THE COURT: Yes. When you're making an opening
20 statement to the jury or a closing statement to the jury or
21 examining one of the officers, that's not the time for you to
22 give testimony. That's the time you're wearing your attorney
23 hat. That's the time you're speaking. And some people find it
24 helpful to do this, to speak like in the third person, to say,
25 Mr. Muñoz will tell you, Mr. Muñoz, you know, didn't you say to

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1 Mr. Muñoz, didn't you hit Mr. Muñoz?

2 When you're on the witness stand and testifying under
3 oath, you can tell the jury, I was hit. This is how I hurt.
4 This is what my broken ribs felt like. OK?

5 Now, we'll take breaks as necessary during the trial
6 to make sure that you're not confused by this. I'll try to
7 give you the appropriate guidance. But essentially the only
8 time you can tell the jury precisely what happened is when
9 you're under oath on the witness stand. OK?

10 MR. MUÑOZ: I understand that, ma'am. Thank you.

11 THE COURT: Now, this applies to both sides. I don't
12 want either of you to object when a question is placed or an
13 answer is given in the middle of a sentence. Let the whole
14 sentence, the whole question, be placed or the whole answer be
15 given, and then you can object.

16 How do you object? You just say the word "objection."
17 You don't have to spell it out. I'll be listening carefully.
18 I'll try to understand precisely what the objection might be
19 and I'll give you a ruling that allows the witness to answer or
20 not. If I'm confused about what the basis of the objection
21 might be, I'll make sure we take a break and I get a chance to
22 ask you exactly what the basis of the objection is.

23 Mr. Muñoz, you're not going to be able to ask the jury
24 to give you a precise amount of money in your summation.
25 You're not going to be able to say this injury is worth this

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1 amount of money. OK? But you can explain to them and refer to
2 your own testimony, you can remind them of what you testified
3 about and how you suffered, but you can't put a dollar figure
4 on it. Do you understand what I'm saying?

5 MR. MUÑOZ: Yes, your Honor. Yes, ma'am.

6 THE COURT: Good.

7 Let me ask you, Mr. Lichterman, is there anything else
8 that we need to cover from your point of view?

9 MR. LICHTERMAN: No, your Honor.

10 THE COURT: Mr. Lichterman, tomorrow you're going to
11 help us, both the plaintiff and me, get better prepared for
12 this trial. You're going to get him some documents that he
13 needs. You're going to write a letter that identifies with
14 some precision precisely what these medical issues are and the
15 convictions are and the other things we talked about, so that
16 I can rule appropriately on what might be admissible. OK?

17 MR. LICHTERMAN: Yes, your Honor.

18 THE COURT: Thank you.

19 Mr. Muñoz, did you have any questions for me today?

20 MR. MUÑOZ: Your Honor, it's been a pleasure. I would
21 like to say, with all respect, thank you.

22 Also, one question for you. Am I allowed to bring the
23 paperwork that I have with me during trial?

24 THE COURT: Yes. Now, I am going to have to
25 coordinate with my deputy and the prison facility. Hold on one

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1 second.

2 (Pause)

3 We are going to break in a moment. If there are any
4 documents that you think you left back in your prison facility
5 and don't have with you here, make sure you mention that to
6 Mr. Lichterman so he can get you copies tomorrow. It would be
7 important for you to be able to bring your documents with you
8 back and forth from your cell to court, including an outline of
9 anything you want to tell the jury.

10 Anything else, Mr. Muñoz?

11 MR. MUÑOZ: No, ma'am. Thank you.

12 THE COURT: I'll see everybody Monday morning at 9:30.

13 Thank you, all.

14 (Adjourned)

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